Supreme Court, U.S.
FILED
FEB 14 2000
CLERK

(3)

No. 99-1101

In The

Supreme Court of the United States

URVASHI B. PATEL, an individual,

Petitioner,

v.

OMH MEDICAL CENTER, INC., an Oklahoma corporation, ST. FRANCIS HOSPITAL, INC., an Oklahoma corporation and LARRY D. HENRY, an individual and ARRINGTON, KIHLE, GABERINO & DUNN, INC.,

Respondents.

On Petition For Writ Of Certiorari To The Supreme Court Of Oklahoma

PETITIONER'S REPLY BRIEF

CLIFFORD N. RIBNER
Counsel of Record
320 South Boston, Suite 1130
Tulsa, OK 74103
(918) 582-9200
Attorney for Petitioner

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

788

QUESTION PRESENTED FOR REVIEW

I. Was Petitioner deprived of her constitutional right to the equal protection of the laws when the Oklahoma Supreme Court declared that the Respondents in this case were legally entitled to prophylatic immunity from liability to Petitioner for having committed, in concert, extreme acts of fraudulent litigational misconduct in another lawsuit in which Petitioner was the plaintiff and Respondents were the defendants and their attorneys (which misconduct included the intentional fabrication and spoliation of evidence, perjury, defrauding Petitioner, the Trial Judge and the jury therein, on which fraud Petitioner, the Trial Judge and the jury each relied to their detriment) resulting in the destruction of Plaintiff's property – her legal claims against such defendants – all of which attorney-complicit fraudulent misconduct was engaged in by Respondents as their sole defense to plaintiff's claims against them, whereas identical and even substantially less egregious, litigational misconduct has long been actionable in Oklahoma if committed by a plaintiff against a defendant, with the Oklahoma Supreme Court offering no rational basis for such differential treatment of defendants, as opposed to plaintiffs?

PARTIES TO THE PROCEEDING

Petitioner, Urvashi B. Patel, was the Plaintiff and the Appellee in the Courts below.

Respondents, OMH Medical Center, Inc., St. Francis Hospital, Inc., and Larry D. Henry and Arrington, Kihle, Gaberino & Dunn, Inc., were the Defendants and the Appellants in the Courts below. Subsequent to the commencement of this action, Respondent Arrington, Kihle, Gaberino & Dunn, Inc., merged into and changed its name to Gable & Gotwals.

There are no other parties to this action.

TABLE OF CONTENTS

Page

QUESTION PRESENTED FOR REVIEW i

PARTIES TO THE PROCEEDING ii

TABLE OF CONTENTS iii

TABLE OF AUTHORITIES iii

PETITIONER'S REPLY BRIEF 1

STATEMENT OF JURISDICTION 1

STATEMENT OF THE CASE 1

TABLE OF AUTHORITIES

FEDERAL RULES OF CIVIL PROCEDURE

Federal Rule of Civil Procedure 12(b)(6) 2

OTHER AUTHORITIES

14 Martindale-Hubbell Law Directory 2000 OK188B, OK233B 1

PETITIONER'S REPLY BRIEF

Petitioner, Dr. Urvashi B. Patel, hereby submits this Reply Brief under S. Ct. R. 15 to address arguments first raised in the Respondents' Brief in Opposition.

STATEMENT OF JURISDICTION

Respondents dispute this Court's jurisdiction here on grounds fully addressed in the Petition for Writ of Certiorari.

STATEMENT OF THE CASE

Respondents fail to advise this Court of the fact that their Counsel of Record's law firm – Gable & Gotwals – is, in fact, one of the Respondents themselves – Arrington, Kihle, Gaberino & Dunn, Inc. – operating under a changed name, in which Respondent Larry D. Henry remains a member. 14 Martindale-Hubbell Law Directory 2000 OK188B, OK233B. Accordingly, Respondents' Counsel is not, as it intimates, independent, but rather is directly interested as a principal in both this case and Patel II.

Respondents attempt to misrepresent the record in this case, including the Oklahoma Supreme Court's Opinion herein. Respondents claim that the Oklahoma Supreme Court "disturbed" the Trial Court's finding of their attorney-complicit fraud in *Patel II*. As shown in Petitioner's Reply Brief in *Patel II*, filed on even date herewith, such claim is textually unsupportable: *See* ¶ 48

of the Oklahoma Supreme Court's Opinion (Pet. App. 40a-41a), unmentioned in Respondents' Brief, where alone in its Opinion that Court specifically describes the questions it mandates for the Trial Court's determination on remand, which notably do not include the question of attorney-complicit fraud itself, which that Court implicitly assumed was already proven and, accordingly, did not "disturb."

Respondents attempt to misrepresent the magnitude of the allegations in this case contained in Petitioner's original pleading, which allegations this Court must take to be true since, as Respondents do not dispute, such Petition was dismissed under an Oklahoma statute interpreted identically to Federal Rule of Civil Procedure 12(b)(6).

Respondents also pretend that Judge Wiseman, the Trial Court Judge in *Patel II*, did not find their attorney-complicit fraud to be knowing and deliberate. Her Opinion, together with the facts on which it is based, could hardly be clearer in this regard, as discussed in Petitioner's Reply Brief in *Patel II*.

Respondents' willfulness in their fraud is also graphically proven to this Court both by the fact that they never corrected it and their continued denials, here and in *Patel II*, in the face of literally undeniable evidence to the contrary and the findings of the Oklahoma Courts, that they indeed engaged in the deceit Judge Wiseman ruled on, as also discussed in Petitioner's Reply Brief in *Patel II*. The Oklahoma Supreme Court's Opinion here

and in *Patel II* rewards all such misconduct, a result this Court must in all respects reverse.

Respectfully submitted,

CLIFFORD N. RIBNER
Counsel of Record
320 South Boston, Suite 1130
Tulsa, OK 74103
(918) 582-9200

Counsel for Petitioner

February, 2000